

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 07 2005

SUSAN E. MORLAN,

Plaintiff - Appellant,

v.

QWEST DEX, INC., a Colorado
corporation,

Defendant - Appellee.

No. 04-35857

D.C. No. CV-03-01406-MO

MEMORANDUM*

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Argued and Submitted November 18, 2005
Portland, Oregon

Before: GRABER and RAWLINSON, Circuit Judges, and OTERO,** District
Judge.

In this diversity case, Plaintiff Susan E. Morlan appeals from the grant of
summary judgment in favor of her former employer, Defendant Qwest Dex, Inc.,

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or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The Honorable S. James Otero, United States District Judge for the
Central District of California, sitting by designation.

on her state law defamation claims.¹ On de novo review, Buono v. Norton, 371 F.3d 543, 545 (9th Cir. 2004), we affirm.

The allegedly defamatory statements were conditionally privileged because they were made to protect the interests of the employer. Wattenburg v. United Med. Labs., Inc., 525 P.2d 113, 114 (Or. 1974). For Plaintiff to prevail here, the record must disclose a genuine issue of material fact concerning an abuse of this conditional privilege. The privilege is abused if the speaker's primary motive is unrelated to the purpose of the privilege, if the speaker believes the statement is false, or if the speaker lacks an objective reasonable ground for the statement. Muresan v. Phila. Romanian Pentecostal Church, 962 P.2d 711, 715 (Or. Ct. App. 1998).

Plaintiff argues that, with respect to certain allegedly defamatory statements by Dodson, Gibson, Basile, and Groves, there is evidence from which a reasonable finder of fact could conclude that the speakers abused the privilege because of their personal motives and their lack of reasonable grounds to believe the statements.²

¹ Plaintiff originally made other claims as well, but she stipulated to summary judgment as to those claims, and they are not at issue on appeal.

² Plaintiff affirmatively abandoned her claim involving Demmin.

After carefully reviewing the record, we disagree. We are persuaded that the district court properly analyzed the statements that are at issue on appeal.

AFFIRMED.